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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII**

REED SAILOLA,

Plaintiff,

vs.

GILA, LLC d/b/a MUNICIPAL
SERVICES BUREAU.

Defendants.

) CASE NO. 1:13-cv-00544 HG/RLP

) **PLAINTIFF REED SAILOLA'S**
) **CONCISE STATEMENT OF**
) **FACTS IN SUPPORT OF HER**
) **MOTION FOR PARTIAL**
) **SUMMARY JUDGMENT;**
) **DECLARATION OF RICHARD L.**
) **HOLCOMB; DECLARATION OF**
) **REED SAILOLA; EXHIBITS "A"**
) **THROUGH "L"; CERTIFICATE**
) **OF SERVICE**

CONCISE STATEMENT OF FACTS
IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT

Pursuant to Rule 56.1(a) of the Local Rules of Practice for the United States District Court for the District of Hawai‘i, Plaintiff Reed Sailola hereby submits his separate concise statement of material facts in support of his Motion for Summary Judgment, filed contemporaneously herewith.

No.	FACTS	EVIDENTIARY SUPPORT
1	Defendant uses the Interactive Intelligence dialing system.	[Doc. 59-9 ¶¶ 12-13];
2	Defendant has specifically admitted that its dialing system is an ATDS.	[Doc. 10 ¶¶ 8-29]; Million Depo., pp. 349, 15-18, 20-24, p. 350, lines 1-5, 9-14, 20, 22-25, 1-19, Depo Exhibits 21, 22
3	Defendant has presented proof to this Court that the dialer can store numbers and dial from the lists that are stored.	[Doc. 59-10]; Million Depo., p. 324, lines 1-13, Depo Exhibit 16.
4	Defendant’s most recent position is that “companies that engage in debt collecting activities, like MSB, simply do not know whether certain technology – which MSB utilizes – is or is not a violation of the TCPA.:	[Doc. 77, p. 2]; Million Depo., p. 354, lines 15-25, p. 355, lines 8-18, Depo Exhibit 23.
5	The Interactive Intelligence system has the capacity to store numbers, and sequentially dial those numbers, pursuant to multiple programmable criteria, without any human involvement whatsoever.	Holcomb Decl., ¶¶ 4, 14; Exhibits “A” and “L” ; [Doc. 59-10]; Million Depo., p. 306, lines 2-10, 16-22, p. 311, lines 1-4, p. 312, lines 9-14, 21, 24-25, p. 313, lines 3-4, 7-13, p. 314, lines 6-14, 21-25, p. 315, lines 1-13, p. 315, lines 17-22, p. 317, lines 7-16, 19-25, p. 318, lines 1-13, 16-18, 24-25, p. 319, lines 1-9, 22-25, p. 320, lines 1-6, p. 323, lines 1-3, 5-6, 10-14, p. 324, lines 1-13, p. 327, lines 10-19, 24-25, p. 328, 1-4, 6-7, 9-18, p. 329, lines 6-20, 22-25., p. 330 lines 1-25, p. 331, lines 1-18, 21-25, p. 332, lines 1-

		19, 22-25, p. 333, lines 1-10, 12-16, p. 335, lines 21-25, p. 336, lines 1-25, p. 337, lines 1-8, 12-25, p. 338, line 1, p. 339, line 2-3, 5-15, p. 340, lines 7-18, p. 341, lines 6-14, 18-25, 1-7, Depo Exhibits 16-20.
6	The Interactive Intelligence system is a predictive dialer.	Holcomb Decl., ¶¶ 4, 14; Exhibits “A” and “L” ; Million Depo., p. 312, lines 21, 24-25, p. 328, lines 6-7, 9-18, p. 329, lines 11-19, 22-25, p. 330, lines 1-14, 21-25, p. 331, 1-15, p. 333, lines 1-10, 12-15, p. 336, 18-25, p. 337, lines 1-8, 12-22, p. 339, lines 2-3, 5-15 Depo Exhibits 16-20.
7	The Hawaii Judiciary electronically transfers relevant data to MSB.	[Docs. 95-4; 30-1, ¶ 8]; Million Depo., p. 56, lines 13-18, Depo Exhibits 4
8	The transferred data is then stored and organized or categorized through the dialer’s “campaign management” which uses the dialer’s “patented predictive algorithm” to dial transferred numbers.	Holcomb Decl., ¶¶ 4, 15, Exhibits “A” and “L” ; Million Depo., pp. 313, lines 3-4, 7-13, p. 314, lines 6-14, 21-25, p. 315, lines 117-22, p. 317, lines 6-16, 19-25, p. 318, lines 1-13, 16-18, 24-25, p. 319, lines 1-9, p. 324, lines 1-12, p. 329, lines 11-19, 22-25, p. 330, lines 1-14, 21-25, p. 331, lines 1-15, p. 332, lines 22-25, p. 33 lines 1-10, 12-15, p. 336, lines 18-25, p. 337, lines 1-8, 12-22, p. 339, lines 2-3, 5-15, Depo Exhibits 16-20
9	MSB has left at least 35 prerecorded voice messages on Mr. Sailola’s cellular telephone.	Sailola Decl. ¶ 15, Exhibit “C” (recordings to be manually filed); [Doc. 37-10]; Million Depo., p. 358, lines 204, 9-10, 13, 16-17, 19, 22-23, p. 359, lines 7-8, 11-18, 21-25 p. 360, lines 2-4, p. 361, lines 10-11, 14-24, Exhibit 10.
10	In response to MSB’s written interrogatories and subpoena duces tecum, the Hawaii Judiciary produced any and all documents relating to contact information	Holcomb Decl. ¶ 5, Exhibit “B” ; [Doc. 67-7]; Million Depo., p. 206, lines 24-25, p. 207, lines 1-5, 18-25, p. 208, lines 1-25, p. 234, lines 23-25, 1-7, Depo. Exhibit 9.

	and/or collection of monies owed to the Hawaii State Judiciary by Mr. Sailola, including those that are the source of contact information that was forwarded to MSB with the intent that MSB begin collecting upon monies owed.	
11	The Hawaii Judiciary produced three citations for which MSB has never attempted to collect money.	Holcomb Decl. ¶ 5, Exhibit “B” ; [Doc. 67-7]; Million Depo., p. 67, p. lines 1-14, p. 68, lines 21-25, p. 69 lines 1-2, p. 212, lines 5-8, 19-25, p. 213, lines 1-4, 13-22, p. 214, lines 4-9, Depo. Exhibit 4.
12	The Hawaii Judiciary produced a Bail/Bond Receipt relating to case no. 1DTA-11-03671, the case for which MSB was trying to collect. The Bail/Bond Receipt shows that \$1000 bail was posted and that Mr. Sailola provided 737-7563 as his telephone number.	Holcomb Decl. ¶ 5, Exhibit “B” ; [Doc. 67-7]; Sailola Decl. ¶¶ 3, 9; Million Depo., p. 67 lines 1-15, 17-21, p. 68 lines 4-18, 21-25, p. 69 lines 1-2, p. 214, lines 10-19, p. 215, lines 1-3, 8-10, p. 221, lines 1-4, Depo. Exhibit 4.
13	Instead of calling 737-7563, MSB called Mr. Sailola’s cellular telephone number which was 864-4957.	Holcomb Decl. ¶ 6, Exhibit “D” ; [Doc. 67-6]; Sailola Decl. ¶¶ 8-9; Million Depo., p. 217, lines 7-22, p. 241, lines 1-8, Depo, Exhibit 10.
14	Pursuant to the subpoena duces tecum, the Hawaii Judiciary also produced the Notice of Entry of Judgment from Case No. 1DTA-11-03671, dated December 6, 2012, which shows that a total of \$512 in fines and fees were assessed, that the \$1000 bail was to be applied towards those fines and fees, and that the balance was to be refunded to Mr. Sailola.	Holcomb Decl. ¶ 5, Exhibits “B” and “D” ; [Doc. 67-7]; Sailola Decl. ¶¶ 3-4; Million Depo., p. 220, lines 22-25, p. 221, lines 1-10, 14-20, 24-25, p. 222, lines 3-5, p. 223, lines 10-16, p. 234, lines 2-5, 13-15, Depo. Exhibits 4, 10.
15	MSB could have obtained the Notice of Entry of Judgment(s) prior to initiating collection calls.	Holcomb Decl. ¶ 7, Exhibit “E” ; Million Depo., p. 255, lines 3-6, Depo Exhibits 4-10.

16	MSB could have accessed Hawaii's eKokua system prior to initiating collection calls. The eKokua December 6, 2012 entry in Mr. Sailola's case states "Bond Applied and refund balance to postee."	Holcomb Decl. ¶ 8, Exhibit "F" ; Million Depo., p. 184, lines 3-12, p. 185, lines 5-25, Depo. Exhibit 8.
17	MSB has been specifically informed by the Hawaii State Judiciary that the posted bail should have covered the fines and fees it sought to collect and that the case should not be at collections.	Holcomb Decl. ¶ 5, Exhibit "B" ; [Docs. 67-7; 95-7]; Million Depo., p. 222, lines 9-13, p. 259, lines 20-25, 260, lines 1-10, 12, 17-25, p. 261, lines 1-9, 14-17, p. 264, lines 20-23, p. 265, lines 1-5, Depo Exhibits 10, 11.
18	On December 6, 2012, Mr. Sailola specifically sought and was granted a stay of his sentence pursuant to Hawaii law, which was confirmed on both January 7 and June 6, 2013.	Holcomb Decl. ¶¶ 7, 9, 10, Exhibits "E", "G" (transcript of December 6, 2012 proceedings) and "H" (manually filed electronic recording); Sailola Decl. ¶¶ 5-7; Million Depo., p. 186, lines 1-3, 10-24, p. 187, lines 1-12, p. 265, lines 24-25, p. 267, lines 5-6, 9-15, 19-25, p. 268, lines 4-9, 11-16, 23-25, p. 269, lines 108, Depo. Exhibits 8, 12.
19	On July 8, 2013, MSB recorded a conversation between its representative and Mr. Sailola.	Holcomb Decl. ¶ 11, Exhibit "I" ; Sailola Decl. ¶¶ 11-16; [Doc. 30-2] Million Depo., p. 365, lines 6-14, 16-17, p. 366, 16-21, Depo. Exhibit 26.
20	During the July 8, 2013 conversation, the MSB representative asked Mr. Sailola "OK, and the number we called you on, sir, is that a good number to reach you," to which Mr. Sailola replied "yes."	Holcomb Decl. ¶ 11, Exhibit "I" ; Sailola Decl. ¶¶ 11-16; Million Depo., p. 369, lines 6-10, Depo. Exhibit 26.
21	During the July 8, 2013 conversation, Mr. Sailola did not know why MSB would be calling to collect the purported fine, specifically informed MSB that he thought his attorney "John Burge" was handling that matter, twice	Holcomb Decl. ¶ 11, Exhibit "I" ; Sailola Decl. ¶¶ 11-16; Million Depo., p. 365, lines 18-25, p. 366, 1-2, 5-12, 16-21, Depo Exhibit 26.

	informed MSB that Mr. Sailola had to speak with his attorney, and that Mr. Sailola would call MSB back. Mr. Sailola did not invite further calls from MSB or otherwise indicate that he consented to any future calls.	
22	After July 8, 2013, MSB continued to call Mr. Sailola.	Holcomb Decl. ¶ 6, Exhibit "D" ; [Doc. 67-6]; Million Depo., p. 102, lines 8-20, 24, p. 103, lines 1-5

DATED: Honolulu, Hawaii; December 3, 2014

s/Richard L. Holcomb
Richard L. Holcomb 9177
Attorney for Plaintiff